



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 25, 1998

Ms. Elizabeth Dierdorf
Assistant City Attorney
City of Fort Worth
100 Throckmorton
Fort Worth, Texas 76102

OR98-0538

Dear Ms. Dierdorf:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113432.

The City of Fort Worth (the "city") received two requests for information relating to sexual harassment complaints against a city employee. You have released most of the requested information to the requestor; however, you contend that certain handwritten notes, summaries, and other information are excepted from public disclosure by sections 552.103 and 552.111¹ of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of documents.²

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information

¹You failed to assert section 552.111 within ten business days of the city's receipt of the request for information; therefore, you have waived this exception to public disclosure as to the requested information. See Gov't Code § 552.301.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

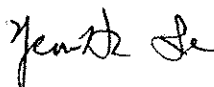
You have submitted information to this office showing that the requestor and another city employee have filed complaints with the Texas Commission on Human Rights (the "TCHR") alleging discrimination and retaliation. The TCHR operates as a federal deferral agency under section 706(c) of title VII, 42 U.S.C. § 2000e-5. The Equal Employment Opportunity Commission ("EEOC") defers jurisdiction to the TCHR over complaints alleging employment discrimination. *Id.*

This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1. By showing that the complaints filed with the TCHR are pending, you have shown that litigation is reasonably anticipated. Our review of the records at issue also shows that they are related to the anticipated litigation for purposes of section 552.103(a). Thus, you may withhold the remaining requested information pursuant to section 552.103(a).

We note that once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. We also note that the applicability of section 552.103(a) ends when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 113432

Enclosures: Submitted documents

cc: Mr. George Haratsis
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Fort Worth, Texas 76102
(w/o enclosures)